

AMENDMENTS TO

(Note: Crossed out text indicates proposed deletions. Underscored text indicates proposed additions.)

ARTICLE 30-03 FISHERY MANAGEMENT

Chapter	
03-03-01	Bait Vendors
03-03-03	Construction and Use of Fishhouses for Winter Fishing

CHAPTER 30-03-01 BAIT VENDORS

Section	
30-03-01-01	License Required
30-03-01-03	License Limitations
30-03-01-04	Assistants Covered by License
30-03-01-05	Quantity Requiring License
30-03-01-06	Equipment
30-03-01-07	Species Permitted
30-03-01-08	Interstate Transport
30-03-01-09	Records
30-03-01-10	Seines and Traps <u>[Repealed]</u>
30-03-01-11	Live Bait Farm
30-03-01-12	Equipment for Live Bait Farms
30-03-01-13	Minnow Stocking
30-03-01-14	Violations are Noncriminal <u>and Penalties</u>

Section 30-03-01-01 is amended as follows:

30-03-01-01. License required. No person, as defined by North Dakota Century Code section 20.1-01-02(33), shall sell, at retail or at wholesale, any live bait without first obtaining the appropriate annual license authorizing the person to do so. All licenses must be publicly displayed on the business premises. Business names must be displayed on any vehicle used to transport bait for sale. Licenses will be issued on a calendar year basis.

History: Amended effective January 1, 1991; May 1, 1995; _____, 2006.

General Authority: NDCC 20.1-06-14

Law Implemented: NDCC 20.1-06-14

Section 30-03-01-03 is amended as follows:

30-03-01-03. License limitations. The holder of a retail bait vendor license may sell live bait at retail only, at one specified selling location per license. ~~The holder of a A wholesale bait vendor license may only sell live bait at wholesale only to a licensed bait vendor.~~ Both a retail license and a wholesale license are necessary to sell live bait at both retail and wholesale.

History: Amended effective May 1, 1995; _____, 2006.

General Authority: NDCC 20.1-06-14

Law Implemented: NDCC 20.1-06-14

Section 30-03-01-04 is amended as follows:

30-03-01-04. Assistants covered by license. Retail or wholesale bait vendor licenses are issued to one ~~individual~~ person only. A licensed retail bait vendor may have the assistance of other persons to sell live bait at the selling location designated on the vendor's license. A licensed wholesale bait vendor may ~~have~~ employ the assistance of other persons to only sell and transport live bait, provided the original or copy of the wholesale license and other appropriate permits are carried on the person or in the transport vehicle. The license holder is responsible for the actions of employees, including all agents or assistants acting under their license. No one who has had a department issued license revoked or suspended within three years may act as an agent or assistant.

History: Amended effective May 1, 1995; _____, 2006.

General Authority: NDCC 20.1-06-14

Law Implemented: NDCC 20.1-06-14

Section 30-03-01-05 is amended as follows:

30-03-01-05. Quantity requiring license. ~~It shall be considered as possessing for commercial purposes when any person has in possession at one time Possession of over twelve dozen minnows or live~~ bait fish legal for use or resale shall require a retail or wholesale license.

History: Amended effective May 1, 1995; _____, 2006.

General Authority: NDCC 20.1-06-14

Law Implemented: NDCC 20.1-06-14

Section 30-03-01-06 is amended as follows:

30-03-01-06. Equipment. Persons commercializing in or transporting live bait shall use equipment capable of maintaining such live bait in a healthy and lively condition at all times. Each species of live bait fish must be kept separate from other species of live bait fish in holding and transport equipment. The premises and equipment of all persons commercializing in live bait shall be open to the inspection of the ~~game and fish~~ director or any of the director's duly appointed agents at any time. ~~Upon inspection, if equipment is found to be inadequate for these purposes, the vendor will be notified in writing. Upon written notification, the vendor shall make the necessary corrections within thirty days.~~

History: Amended effective January 1, 1991; May 1, 1995; _____, 2006.

General Authority: NDCC 20.1-06-14

Law Implemented: NDCC 20.1-06-14

OBJECTION

THE LEGISLATIVE COUNCIL'S COMMITTEE ON ADMINISTRATIVE RULES OBJECTS TO THAT PART OF NORTH DAKOTA ADMINISTRATIVE CODE SECTION 30-03-01-06 THAT ESTABLISHES A PENALTY OF \$250 FOR AN EQUIPMENT VIOLATION.

The committee objects to this rule because:

1. Vendors must use appropriate equipment for maintaining live bait.
2. If that equipment is not adequate to maintain the bait in a healthy and lively condition, it is unlikely that customers will continue to buy the bait.
3. The appropriate penalty for inadequate equipment violations would be loss of the business due to an inferior product. Therefore, the two hundred fifty dollar fine is excessive and probably unnecessary.

Section 28-32-03.3 provides that after the filing of a committee objection, the burden of persuasion is upon the agency in any action for judicial review or for enforcement of the rule to establish that the whole or portion thereof objected to is within the procedural and substantive authority delegated to the agency. If the agency fails to meet its burden of persuasion, the court shall declare the whole or portion of the rule objected to invalid and judgment shall be rendered against the agency for court costs.

History: Effective August 9, 1991.

General Authority: NDCC 28-32-03.3

Section 30-03-01-07 is amended as follows:

30-03-01-07. Species permitted. Persons raising ~~minnows or other~~ bait fish for sale shall raise ~~for sale only the following those~~ those species: ~~the common white sucker, catostomus commersoni; and members of the family cyprinidae native to North Dakota waters with the exception of the carp, cyprinus carpio; the goldfish, carassius auratus; or any species listed as threatened or endangered listed in the current fishing proclamation as legal live bait fish.~~

History: Amended effective May 1, 1995; _____, 2006.

General Authority: NDCC 20.1-06-14

Law Implemented: NDCC 20.1-06-14

Section 30-03-01-08 is amended as follows:

30-03-01-08. Interstate transport. It ~~shall be~~ is illegal to ~~transport minnows import or ship other live baitfish and amphibians bait~~ into or out of the state except with a permit issued by the ~~game and fish~~ director and only ~~with equipment in the manner~~ approved by the director. Shipments of legal baitfish, ~~and amphibians, and other aquatic organisms~~ into or out of North Dakota are subject to periodic inspection by a duly appointed agent of the ~~game and fish~~ director. The director must be notified a minimum of twenty-four hours ~~prior to before~~ any import of minnows or other live baitfish, ~~or amphibians, or other aquatic organisms.~~ Failure of the vendor to secure the proper ~~permission permits~~ is a ~~noncriminal offense~~ Class B misdemeanor and may result in the revocation of the vendor's license ~~and assessment of a penalty of two hundred fifty dollars.~~

History: Amended effective June 1, 1985; January 1, 1991; May 1, 1995; _____, 2006.

General Authority: NDCC 20.1-06-14

Law Implemented: NDCC 20.1-06-14

Section 30-03-01-09 is amended as follows:

30-03-01-09. Records. Each licensee shall keep accurate and up-to-date records, on forms furnished by the department, of location, species, and numbers of ~~minnow or live bait seined or trapped by the dealer from public or private waters.~~ Authorization to trap rivers and streams is required from the director ~~prior to before~~ trapping. A bait dealer purchasing live bait or ~~minnows~~ frozen bait fish for resale must record, on forms furnished by the department, the species and number as well as the name and address of the person from whom the dealer purchased them. ~~This record~~ Records must be open to inspection by ~~an employee of the department~~ at any reasonable hour. A copy of this record shall be submitted to the director no later than thirty days following expiration of the license. ~~The record~~ Records must be ~~kept intact~~ retained by the license holder for a period of two years after the expiration of any license issued under this section.

History: Amended effective January 1, 1991; May 1, 1995; _____, 2006.

General Authority: NDCC 20.1-06-14

Law Implemented: NDCC 20.1-06-14

Section 30-03-01-10 is repealed:

~~**30-03-01-10. Seines and traps.** A person possessing only a retail license may take minnows with a seine not exceeding twenty-five feet [7.6 meters] in length and six feet [1.8 meters] in depth or with traps not larger than thirty inches [76 centimeters] in length, twelve inches [30.5 centimeters] in diameter, with a throat opening not to exceed one and one-quarter inches [3.2 centimeters] in diameter. The mesh size of both seine and traps shall not exceed three-eighths inch [9.5 millimeters] square measure. Repealed effective _____, 2006.~~

~~**General Authority:** NDCC 20.1-06-14~~

~~**Law Implemented:** NDCC 20.1-06-14~~

Section 30-03-01-11 is amended as follows:

30-03-01-11. Live bait farm. The term "live bait farm" means any ~~private hatchery, other~~ facility, or pond used to raise live bait for wholesale. A live bait farm may be operated only by the holder of a wholesale bait license. Any wholesaler stocking live bait must first procure a stocking permit from the director.

History: Amended effective _____, 2006.

General Authority: NDCC 20.1-06-14

Law Implemented: NDCC 20.1-06-14

Section 30-03-01-12 is amended as follows:

30-03-01-12. Equipment for live bait farms. A person possessing only a retail license may take live bait fish with a seine not exceeding twenty-five feet [7.6 meters] in length and six feet [1.8 meters] in depth or with traps not larger than thirty inches [76 centimeters] in length, twelve inches [30.5 centimeters] in diameter, with a throat opening not to exceed one and one-quarter inches [3.2 centimeters] in diameter. The mesh size of both seine and traps shall not exceed three-eighths inch [9.5 millimeters] square measure.

A wholesaler operating a live bait farm may use additional equipment for harvesting the live bait, under the following conditions:

1. Upon application by a wholesaler, a permit may be granted by the ~~game and fish~~ director for the use of additional trapping or seining nets to harvest live bait from described private areas. The permit shall be issued only after it has been determined that the use of the ~~private~~ areas does not in any way interfere or conflict with the ~~fishery~~ resource management program programs of the ~~North Dakota game and fish~~ department or the United States fish and wildlife service.
2. Netting equipment allowed by special permit shall be used only in areas listed on the permit, and the equipment must have attached at all times the tags issued with and corresponding to the permit.
3. Fishtraps used by a wholesaler under permit shall be restricted to those less than five feet [1.5 meters] in ~~diameter~~ any dimension. Mesh size shall not exceed one-half inch [12.7 millimeters] square measure, and the throat opening shall be less than ~~six~~ three inches [~~452~~ 76.2 millimeters] in diameter or width.
4. Seines used by a wholesaler under permit shall be restricted to those less than two hundred fifty feet [76 meters] in length and fourteen feet [4.25 meters] in depth. Mesh size shall not exceed one-half inch [12.7 millimeters] square measure.
5. Incidental take of non-permitted species must be returned to the water immediately.

History: Amended effective May 1, 1995; _____, 2006.

General Authority: NDCC 20.1-06-14

Law Implemented: NDCC 20.1-06-04

Section 30-03-01-13 is amended as follows:

30-03-01-13. Minnow stocking Stocking. ~~It shall be illegal to stock minnows or other live bait into any waters of North Dakota where such minnows or bait could escape into waters under sport fish management by the North Dakota game and fish department or the United States fish and wildlife service. Stocking of any live fish, live fish eggs, live amphibians, or other live aquatic organism into any waters of the State shall be illegal except with the appropriate license or permit issued by the director. Violation of this section is a class B misdemeanor.~~

History: Amended effective May 1, 1995; _____, 2006.

General Authority: NDCC 20.1-06-14

Law Implemented: NDCC 20.1-06-14

Section 30-03-01-14 is amended as follows:

30-03-01-14. Violations ~~are noncriminal and penalties.~~ Any ~~person~~ retail or wholesale bait vendor who violates any section of this chapter for which a penalty is not specifically provided is guilty of a noncriminal offense and shall pay a ~~fifty~~ one hundred dollar fee. The violation may result in license revocation ~~of the wholesale or retail license.~~

History: Effective April 1, 1986; amended effective January 1, 1991; May 1, 1995; _____, 2006.

General Authority: NDCC 20.1-02-05(24)

Law Implemented: NDCC 20.1-02-05(24)

AMENDMENTS TO

CHAPTER 30-03-03

CONSTRUCTION AND USE OF FISHHOUSES FOR WINTER FISHING

Section

30-03-03-03	Dimensions
30-03-03-04	Location
30-03-03-05	Open When in Use

Section 30-03-03-03 is amended as follows:

30-03-03-03. Dimensions. ~~The Any structure shall not cover an area of more than one hundred forty four square feet [13.38 square meters]. It used as a fishhouse shall be constructed of a floatable material that will allow it to float. It shall be constructed in such a manner as and to be readily removable from the ice at any time. Campers may not be used as fishhouses. It shall have painted upon the exterior in readily distinguishable characters at least six inches [152 millimeters] high, the license number and name and address of the owner. Holes not to exceed twelve inches [30.5 centimeters] in diameter or square may be made in the ice for the purpose of hook and line angling.~~

History: Amended effective September 1, 1993; _____ 2006.

General Authority: NDCC 20.1-06-07

Law Implemented: NDCC 20.1-06-07

Section 30-03-03-04 is amended as follows:

30-03-03-04. Location. Fishhouses may be placed no closer than fifty feet [15 meters] to each other in any direction and fish holes outside of any fishhouse may not be placed closer than ten feet [3 meters] from any fishhouse without consent of the fishhouse occupant.

History: Amended effective 2006.

General Authority: NDCC 20.1-06-07

Law Implemented: NDCC 20.1-06-07

Section 30-03-03-05 is amended as follows:

30-03-03-05. Open when in use. Houses, when in use, shall be open for inspection at all times ~~and hooks on doors shall be illegal.~~

History: Amended effective 2006.

General Authority: NDCC 20.1-06-07

Law Implemented: NDCC 20.1-06-07